

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 05-232
)	
DAVID EDWARD COX)	
)	
Amateur Radio Operator and Licensee of Amateur)	
Radio Station W5OER)	File No. EB-04-IH-0384

ORDER TO SHOW CAUSE

Adopted: September 26, 2005

Released: September 29, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Order to Show Cause, and pursuant to sections 312(a) and (c) of the Communications Act of 1934, as amended (the “Act”),¹ the Federal Communications Commission’s (the “Commission”) Enforcement Bureau commences a hearing proceeding before a Commission administrative law judge. The purpose of this hearing is to determine whether David Edward Cox, the licensee of the above-captioned Amateur Radio Station and Amateur Radio Operator license, is qualified to remain a Commission licensee in light of his recent felony convictions and whether his authorization should be revoked.

II. BACKGROUND

2. Mr. Cox received the license for Amateur Radio Station KC5OER on April 28, 1995. On July 11, 2000, pursuant to an application for a vanity call sign, the station’s call sign was changed to W5OER, and the term of the license was extended to July 11, 2010. At all times while Mr. Cox was an amateur licensee, the Commission has required that such licensees adhere to certain standards that are set forth in the Commission’s character policy statement.² On August 27, 2003, Mr. Cox was arrested and subsequently charged with two counts of simple burglary, a felony. On January 8, 2004, the District Court of Louisiana convicted Mr. Cox on both counts and sentenced him to five years incarceration at hard labor, but suspended the sentence and placed Mr. Cox on supervised probation for five years.³ Mr.

¹ See 47 U.S.C. §§ 312(a) and (c).

² *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part I, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 (1990) (“1990 Character Order”). The Commission has consistently applied these broadcast character standards to applicants and licensees in the Amateur Radio Service. See, e.g., *Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), cert. denied, 531 U.S. 968 (2000) (affirming the Commission’s denial of an amateur radio operator’s license renewal application based on the licensee’s felony conviction for computer fraud, as well as its lack of candor regarding such conviction) (“Schoenbohm”).

³ *State of Louisiana v. David Edward Cox*, No. 08-03-289 (19th Judicial District Court, Parish of East Baton Rouge, Louisiana, January 8, 2004) (unpublished).

Cox was released from jail on January 14, 2004. On September 21, 2004, Mr. Cox was arrested again and has been incarcerated since that date. Following a plea agreement, on June 3, 2005, the United States District Court sentenced Mr. Cox to concurrent terms of forty-one (41) months for felony violations of various firearms provisions contained in sections 922(g)(1), 922(j) and 924(1) of the United States Criminal Code. The Court also ordered him to make restitution to Redstick Firearms and Indoor Range in the amount of three thousand dollars (\$3,000).⁴

III. DISCUSSION

3. Section 312(a)(2) of the Act provides that the Commission may revoke any license if “conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application.”⁵ The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought.⁶

4. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.”⁷ The Commission has found that “[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant’s or licensee’s propensity to obey the law” and to conform to provisions of both the Act and the agency’s rules and policies.⁸ As noted above, the Commission has consistently applied these broadcast character standards to applicants and licensees in the Amateur Radio Service.⁹ Thus, felony convictions raise potential questions regarding an amateur licensee’s qualifications.

5. Here, Mr. Cox’s multiple felony convictions¹⁰ raise serious questions as to whether he possesses the requisite character qualifications to be and to remain a Commission licensee and whether his captioned license should be revoked. Before revoking a license, the Commission must serve the licensee with an order to show cause why revocation should not issue and must provide the licensee with an opportunity for hearing.¹¹ Consequently, we hereby designate the matter for hearing before a

⁴ *United States of America v. David E. Cox*, No. 3:04CR00137-001 (M.D. La, June 3, 2005) (unpublished). 18 U.S.C. §§ 922(g)(1) (possession of a firearm by a convicted felon), 922(j) (possession of a stolen firearm), and 924(1) (theft of a firearm from a licensed firearms dealer).

⁵ 47 U.S.C. § 312(a)(2).

⁶ 47 U.S.C. § 308(b).

⁷ See *1990 Character Order*, *supra* note 2.

⁸ *Id.*

⁹ See *Schoenbohm*, *supra* note 2. See also *Roger Thomas Scaggs*, Order to Show Cause, 18 FCC Rcd 24367 (EB 2003) (finding that an amateur radio operator licensee’s murder conviction raised a material question of fact regarding his character and qualifications to remain a Commission licensee); *George E. Rodgers*, Hearing Designation Order, 10 FCC Rcd 3978 (WTB 1995) (finding that an amateur radio operator licensee’s felony conviction for indecent assault upon and corruption of minors raised a material question of fact regarding his character and qualifications to remain a Commission licensee); *Thomas M. Haynie*, Order to Show Cause and Suspension Order, 7 FCC Rcd 4994 (FOB 1992), *affirmed and licenses revoked*, 7 FCC Rcd 7291 (PRB 1992) (revoking general radiotelephone operator, amateur advanced class radio and amateur radio station licenses on the basis of licensee’s felony conviction for intentional interference with satellite communications); *Jerry E. Gastil*, Order to Show Cause, 4 FCC Rcd 3977 (PRB, FOB 1989) (finding that a general radio operator and amateur radio station licensee’s felony conviction for interfering with governmental radio communications raised serious questions regarding his character and qualifications to remain a Commission licensee).

¹⁰ The facts of Mr. Cox’s felony convictions are *res judicata* and will not be retried in this hearing.

¹¹ 47 U.S.C. § 312(c).

Commission administrative law judge to provide Mr. Cox with an opportunity to demonstrate why his license should not be revoked.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 312(a) and (c) of the Communications Act of 1934, as amended,¹² and authority delegated pursuant to sections 0.111, 0.311, and 1.91(a), of the Commission's rules,¹³ David Edward Cox is hereby ORDERED TO SHOW CAUSE why his authorization for Amateur Radio Advanced Class License W5OER SHOULD NOT BE REVOKED. David Edward Cox shall appear before an administrative law judge at a time and place to be specified in a subsequent order and provide evidence upon the following issues:

(a) to determine the effect of David Edward Cox's felony convictions on his qualifications to be and to remain a Commission licensee; and

(b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether David Edward Cox is qualified to be and to remain a Commission licensee and whether his Amateur Radio License W5OER should be revoked.

7. IT IS FURTHER ORDERED that, pursuant to section 312(c) of the Communications Act of 1934, as amended, and Section 1.91(c) of the Commission's rules,¹⁴ to avail himself of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, David Edward Cox, in person or by his attorney, SHALL FILE with the Commission, within thirty (30) days of the release of this Order to Show Cause, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

8. IT IS FURTHER ORDERED that, pursuant to section 1.92(c) of the Commission's rules, if David Edward Cox fails to timely file a written appearance within the thirty (30)-day period, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the thirty (30)-day period, the right to a hearing shall be deemed to be waived.¹⁵ Where a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.¹⁶

9. IT IS FURTHER ORDERED that, pursuant to section 312(d) of the Communications Act of 1934, as amended,¹⁷ and section 1.91(d) of the Commission's rules,¹⁸ the burden of proceeding with the introduction of evidence and the burden of proof with respect to both of the issues specified above SHALL BE on the Enforcement Bureau.

10. IT IS FURTHER ORDERED that, the a copy of this ORDER TO SHOW CAUSE shall be sent, by Certified Mail, Return Receipt Requested, to David Edward Cox, at 16420 Stoney Point Burch

¹² 47 U.S.C. §§ 312(a) and (c).

¹³ 47 C.F.R. §§ 0.111, 0.311 and 1.91(a).

¹⁴ 47 C.F.R. § 1.91(c).

¹⁵ 47 C.F.R. § 1.92(a).

¹⁶ 47 C.F.R. § 1.92(c).

¹⁷ 47 U.S.C. § 312(d).

¹⁸ 47 C.F.R. § 1.91(d).

Road, Pride, Louisiana 70770, and at Catahoula Correctional, 499 Columbia Road, Harrisonburg, Louisiana 71340.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau